

Message Text

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SUBJECT: US/MEXICO PRISONER TRANSFER TREATY -- IMPLEMENTING
LEGISLATION

1. IN CONNECTION WITH THE FORTHCOMING HEARINGS ON THE
IMPLEMENTING LEGISLATION FOR TRANSFER TREATIES, THE
EMBASSY WOULD WISH TO RAISE THE FOLLOWING POINTS FOR THE
DEPARTMENT'S CONSIDERATION.

2. SECTION 4109 RIGHT TO COUNSEL -- THE EMBASSY AGREES
WITH THE CONCEPT OF THE ADVISABILITY OF LEGAL ADVICE TO
THE PRISONER. WE DO HOWEVER FORESEE PROBLEMS OF SELECTION
OF ATTORNEYS. THERE MAY BE NEED FOR ADVICE FROM BOTH
MEXICAN AND U.S. LAWYERS. WE REGARD THE GENERAL CONCEPT
AS A STEP IN THE DIRECTION OF THE USG PROVIDING GENERAL
LEGAL REPRESENTATION TO US PRISONERS. THERE ARE NUMEROUS
CASES WHERE BETTER LEGAL REPRESENTATION IS NEEDED IN
MEXICO, HOWEVER THE DIFFICULTIES AND BURDEN OF DOING SO
HERE -- AND PRESUMABLY OTHER AREAS OF THE WORLD AS WELL--
SHOULD BE CONSIDERED ON A BROAD POLICY BASIS.

3. THE PRESENCE OF US ATTORNEYS IN MEXICO WORKING AND
BEING PAID FOR SERVICES PERFORMED HERE WILL LIKELY POSE
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NO PROBLEMS TO THE GOM, BUT THE MATTER WILL HAVE TO BE
CLEARED. WE WOULD EXPECT THAT THE US WOULD FACILITATE
THE SAME SERVICES BY MEXICAN ATTORNEYS FOR MEXICAN
NATIONALS IN U.S. PRISONS.

4. SECTION 4114 - THIS PROVISION WOULD ENABLE THE RETURN
OF THE OFFENDER IF THE TRANSFER IS NOT IN ACCORDANCE WITH

THE TREATY OR THE LAWS OF THE U.S. AND IF THE TRANSFERRING STATE REQUESTS HIS RETURN.

THIS TYPE OF PROVISION WAS INCLUDED IN BOTH AN EARLY DRAFT OF THE TREATY (ONE VERSION WAS MEXICAN DRAFT OF OCTOBER 18, 1976; THE OTHER WAS THE DRAFT THAT WENT TO WASHINGTON FOR THE FINAL NEGOTIATING SESSION).

THE INCLUSION OF SUCH A PROVISION WAS DISCUSSED AT LENGTH IN THE LAST NEGOTIATION IN WASHINGTON AND THE PROVISION WAS DELETED ON THE ADVICE OF THE DEPARTMENT OF JUSTICE, THE ARGUMENT BEING, AS WE RECALL, THAT INCLUSION OF SUCH PROVISION COULD LEND TOO MUCH WEIGHT TO A TEST OF CONSTITUTIONALITY. WE HAVE NOT BEEN INFORMED AS TO THE RATIONALE FOR INCLUDING A PROVISION IN THE LEGISLATION WHICH WAS SPECIFICALLY EXCLUDED FROM THE TREATY. FROM A POLICY VIEW, WE HAVE DIFFICULTY WITH THE PROVISION. IN TERMS OF APPLICATION, COULD THE PROVISION BE APPLIED SHOULD A COURT HOLD THAT THE MEXICAN PROCEDURE LEADING TO THE SENTENCE CONSTITUTED A VIOLATION OF BASIC STANDARD OF JUSTICE?

FURTHER, THE PROVISION SEEMS TO PROVIDE THAT THE PROCEDURES FOR RETURN TO MEXICO WOULD BE THOSE OF THE EXTRADITION TREATY WITH MEXICO. THAT TREATY DOES NOT PROVIDE FOR COMPULSORY RETURN OF NATIONALS; HENCE THE ULTIMATE DECISION MUST BE MADE BY THE SECRETARY OF STATE.
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THE EMBASSY QUESTIONS THAT ADVISABILITY OF 1) THE CONCEPT OF FORCEFUL RETURN IN LIGHT OF WHAT WILL LIKELY BE PRESENTED AS STORIES OF INHUMANE TREATMENT AND DENIAL OF JUSTICE AND 2) PUTTING THE SECRETARY IN THE FINAL POSITION OF APPROVING THE RETURN AGAIN ASSUMING SUBSTANTIAL ADVERSE PUBLICITY. UNLESS BOTH POINTS CAN BE RESOLVED IN THE LEGISLATION, THE EMBASSY SEES EITHER POSSIBILITY AS POTENTIALLY EMBARRASSING IN OUR BILATERAL RELATIONS.
THOMPSON

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